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Chief Executive Officer

County of Los Angeles CHIEF EXECUTIVE OFFICE

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November 18, 2008

The Honorable Board of Supervisors
County of Los Angeles
383 Kenneth Hahn Hall of Administration
500 West Temple Street
Los Angeles, CA 90012

Dear Supervisors:

**APPROVE AND IMPLEMENT THE PROPOSED
MARINA DEL REY AFFORDABLE HOUSING POLICY, APPROVE SETTLEMENT
AGREEMENT WITH PEOPLE ORGANIZED FOR WESTSIDE RENEWAL
(FOURTH DISTRICT)
(3 VOTES)**

SUBJECT

Approval and implementation of a revised Marina del Rey Affordable Housing Policy and approval of a settlement agreement with People Organized for Westside Renewal.

IT IS RECOMMENDED THAT YOUR BOARD:

1. Consider the proposed Revised Negative Declaration, together with any comments received during the public review process, find that the project will not have a significant adverse effect on the environment, find that the Revised Negative Declaration reflects the independent judgment of the County, and adopt the Revised Negative Declaration.
2. Approve the Marina del Rey Affordable Housing Policy.
3. Approve and authorize the Chair of the Board to sign the Settlement Agreement and Release for Implementation of the County of Los Angeles Marina del Rey Affordable Housing Policy.

Board of Supervisors
GLORIA MOLINA
First District

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Second District

ZEV YAROSLAVSKY
Third District

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4. Instruct the Department of Beaches and Harbors, Department of Regional Planning, and the Community Development Commission to implement the Marina del Rey Affordable Housing Policy in accordance with their respective responsibilities as set forth in the Policy, as part of new development or redevelopment projects in Marina del Rey subject to the Mello Act.

PURPOSE/JUSTIFICATION OF RECOMMENDED ACTION

On April 4, 2006, your Board directed the Chief Executive Office (CEO) to form and lead a task force comprised of the Directors of the Departments of Beaches and Harbors (DBH), Regional Planning, the Community Development Commission (CDC) and County Counsel, to review the County's current Marina del Rey Affordable Housing Policy (Policy) and report back to your Board with proposed revisions and/or recommendations to the current Policy to ensure the County is in full compliance with the requirements of the Mello Act (California Government Code section 65590, et seq.), which requires local jurisdictions to require the preservation and inclusion of affordable housing in new developments and redevelopments within the Coastal Zone, where feasible.

On February 6, 2008, the Board directed that County staff negotiate policy revisions and a settlement agreement with People Organized for Westside Renewal ("POWER") to provide for replacement affordable housing on a "like-for-like" basis, and a 15 percent inclusionary affordable housing goal calculated on the net new incremental units to be constructed as part of a proposed redevelopment project as follows:

- 1/3 reserved for very low-income persons and families;
- 1/3 reserved for low-income persons and families; and
- 1/3 reserved for moderate-income persons and families.

The Board further directed that the revised Policy also include reasonable notice and priority affordable unit wait lists for former occupants, a definition of "substantial rehabilitation," clarification that the covenant term be consistent with the number of years of the ground lease, and clarification that the definition of "unit" includes studio units.

The agreed upon revised Policy is included as Attachment B.

The Board additionally directed that the CEO and DBH further renegotiate the proposed leases and lease extensions for pending residential projects in Marina del Rey subject to the Mello Act to provide for increased rent credits to ensure that each project would meet the increased affordable housing goals.

The Settlement Agreement and Release for Implementation of the County of Los Angeles Marina del Rey Affordable Housing Policy ("Settlement Agreement") requires that the County approve the revised Policy; consult with POWER regarding the development of guidelines for the implementation of the revised Policy ("Guidelines"); and provide written notice to POWER and its attorneys of any hearings relating to residential development projects in Marina del Rey and any matters otherwise relating to the Mello Act, including further revisions to the Revised Policy and Guidelines (once each is adopted). In return, POWER has agreed to release all potential legal claims relating to implementation of the current Policy, the County's adoption of the revised Policy, and the County's compliance with the Mello Act for the Parcels 10/FF (Neptune Marina), Parcel 64 (Villa Venetia), Parcel 95 (Marina West Shopping Center) and Parcels 33/NR (The Waterfront) residential projects, provided those projects include a 15 percent inclusionary affordable housing component of 1/3 very low-income units, 1/3 low-income units, and 1/3 moderate-income units, and otherwise comply with the revised Policy as set forth in the Settlement Agreement. In addition, POWER has agreed to release its legal claims related to the redevelopment of Parcels 100 and 101 (the Shores project) so long as the affordable housing component approved for that project is not diminished from what your Board had approved on May 15, 2007.

The negotiated Settlement Agreement is included as Attachment C.

Implementation of Strategic Plan Goals

The revised Policy promotes the County's strategic planning goals of Service Excellence, Goal 1, and Families and Children's Well-being, Goal 5, by developing clear and reasonable requirements, incentives, and standards to guide developers in meeting the requirements of the Mello Act, and increasing the affordable housing stock available to low- and moderate-income persons and families in the unincorporated community of Marina del Rey.

FISCAL IMPACT/FINANCING

DBH is currently negotiating lease extensions for Parcels 10/FF (Neptune Marina), Parcel 64 (Villa Venetia), Parcel 95 (Marina West Shopping Center) and Parcels 33/NR (The Waterfront), which are subject to the Mello Act. With respect to these four projects, your Board's approval of the revised Policy is anticipated to result in the construction of approximately 192 on-site replacement and inclusionary affordable housing units – with 60 being reserved for very low-income households, 76 reserved for low-income households, and 56 reserved for moderate-income households.

With respect to the four pending projects, implementation will result in the need for the County to provide rent credits to the lessees to compensate them for the loss in value associated with providing the affordable units on site. The County is currently projecting that it will provide \$70,270,000 million in affordable housing rent credits for these projects. The potential fiscal impacts to the County of compliance with the revised Policy for future development projects in Marina del Rey is unknown at this time.

The revised Policy also includes fees that are intended to recover the full cost for services provided by the CDC for reviewing, evaluating and monitoring income eligibility and housing cost limits.

With respect to the Settlement Agreement, no monetary payment will be made to POWER; each party will bear its own costs.

FACTS AND PROVISIONS/LEGAL REQUIREMENTS

The Mello Act requires that each local government, whose jurisdiction is situated, in whole or in part, within the Coastal Zone, has the responsibility to require the replacement of housing units when affordable housing is converted or demolished, and support the creation of affordable housing units in new construction in a manner consistent with the Mello Act. Compliance is required for that portion of a jurisdiction that is located within the Coastal Zone. Marina del Rey is located within the Coastal Zone and, therefore, is subject to Mello Act requirements for affordable housing.

The Mello Act is intended to provide local jurisdictions with discretion in imposing housing requirements in the Coastal Zone because each situation presents some unique facts and public policy considerations. The Mello Act must be implemented in conjunction with various other state mandates, such as the California Coastal Act, the California Environmental Quality Act (CEQA), and statewide Density Bonus and Housing Element laws. As a local government entity, the County must reconcile these often conflicting state mandates when approving housing developments within the Coastal Zone on a project-by-project basis. The situation in the Marina is complicated by the fact that the County is also the landowner and acts in a proprietary manner regarding leaseholds.

The Mello Act clearly states that the adoption of ordinances and programs are not required to implement the statute's provisions. However, an affordable housing policy creates certainty for the development community as to what requirements will apply to future development projects. The Mello Act acknowledges the need for certainty and predictability by defining feasibility in terms of whether a project can be completed in a "successful" manner within a reasonable period of time. The development of a clear policy, therefore, will encourage the production of affordable housing in Marina del Rey.

In compliance with the Mello Act, the recommended revised Policy provides for construction of replacement affordable housing units in redevelopment projects where existing housing units occupied by low- or moderate-income households are slated for demolition; and construction of inclusionary affordable housing units as part of any new development or redevelopment project that increases the number of residential units on site. More specifically, and as directed by your Board, the replacement housing obligation will be based on the results of an income survey to be completed by the CDC on a project-by-project basis. The rental levels of the replacement units identified as part of the income survey will be equivalent to the income level of the existing tenant whose income level triggers the replacement requirement (i.e., replacement units must be set aside on a like-for-like basis).

The inclusionary housing obligation shall be calculated on the net new incremental units to be constructed as part of any project with a goal of 15% of such newly constructed units being affordable units with 1/3 reserved for very low-income persons and families, 1/3 reserved for low-income persons and families, and 1/3 reserved for moderate-income persons and families based upon an analysis of each project's feasibility. A covenant executed by the lessee guaranteeing that the relevant affordable income and rent requirements for each replacement and inclusionary affordable housing unit will be observed for the term of the lease must be recorded against the leasehold.

In addition, these new affordable housing units must also be reasonably dispersed throughout the project, and comparable in size and design to the market-rate units being developed in the rental component of the new or converted project. The revised Policy further requires that the obligation to construct or rehabilitate affordable replacement and/or inclusionary housing units off-site will be the sole responsibility of the applicant, and any off-site affordable housing units must be completed and available for occupancy prior to the issuance of the Certificate of Occupancy for the new market-rate development, but in no event later than three years from the issuance of a building permit for the new development project. No in-lieu fee program is available to comply with either the replacement or inclusionary housing obligations.

During the environmental review process, provisions of the recommended Policy were revised to clarify: (1) the role of the Policy in the entitlement process; (2) the Policy's notice requirements; (3) the Policy provisions regarding improper evictions; (4) the applicable income standards and rent requirements; and (5) compliance with the CDC's monitoring requirements and the website posting requirements for lessees. We do not consider these changes to be substantive.

The Settlement Agreement has been approved as to form by County Counsel.

ENVIRONMENTAL DOCUMENTATION

On June 11, 2007, my office, under a Delegated Authority Agreement, issued a Notice to Proceed to Sapphos Environmental, Inc. to prepare the necessary environmental compliance document to support the proposed Policy. An Initial Study indicated that the project would not have a significant effect on the environment, thus indicating preparation of a Negative Declaration as the appropriate environmental document in accordance with CEQA. In accordance with the CEQA Guidelines, the County encouraged the public to participate in preparation of the environmental analysis for the project. The Notice of Intent to adopt a Negative Declaration and the Negative Declaration were sent to the State Clearinghouse; distributed to various Federal, State, regional, and local government agencies, and circulated to the public for a 30-day review period that began on September 5, 2007, and closed on October 4, 2007. A public Notice of Availability of the Notice of Intent was published in the *Argonaut* and *Los Angeles Times* newspapers. The Notice of Intent to prepare a Negative Declaration was mailed directly to more than 30 agencies, interested parties, and over 8,500 addresses including community of Marina del Rey residents and those located within 1,500 feet thereof. Copies of the Notice of Intent were provided to the Marina del Rey Library, the Burton Chace Park Community Room, the Marina del Rey Visitors and Information Center, and the DBH Administrative Headquarters. The Notice of Availability was posted at the same locations noted above. The Notice of Intent advertised a public scoping meeting for interested parties to receive information about the project and the CEQA process. The community meeting provided an opportunity for the public to submit comments and facilitated early consultation with interested parties in compliance with Section 15082 of the State CEQA Guidelines. The meeting was held on September 19, 2007, at the Burton Chace Park Community Room. Comments received during the review period, responses to the comments and any resulting clarifications and revisions are contained in the Revised Negative Declaration (Attachment A).

The Revised Negative Declaration did not require recirculation pursuant to Section 15073.5 of the CEQA Guidelines because the changes to the Negative Declaration necessitated by the refinements to the proposed Policy do not constitute a "substantial revision" to the Negative Declaration in that no new, avoidable significant effects have been identified and no mitigation measures or project revisions have been added in order to reduce any effects to insignificance. The revisions to the proposed Policy have been made in response to written and verbal comments on the Policy's effects identified in the Negative Declaration which are not new avoidable significant effects, and new information was added to the Negative Declaration and responses to written and verbal comments that clarified, amplified or made insignificant modifications to existing information in the Negative Declaration and responses to comments.

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The Revised Negative Declaration determined that the Policy will have no effect on fish and wildlife.

IMPACT ON CURRENT SERVICES (OR PROJECT)

Approval and implementation of the revised Policy will not directly impact County services. However, the approval and implementation of the revised Policy has an impact on County leases that are under negotiation for project sites and will provide additional affordable housing units for very low-, low-, and moderate-income families within Marina del Rey.

CONCLUSION

Please return one adopted copy of this letter to the CEO, Facilities and Asset Management Branch, and one copy to DBH.

Respectfully submitted,



WILLIAM T FUJIOKA
Chief Executive Officer

WTF:DL
JSE:mc

Attachments

c: County Counsel
Community Development Commission
Department of Beaches and Harbors

marinadelreynewpolicy